



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 25, 2011

Mr. Mike Leasor
Abernathy, Roeder, Boyd & Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-04142

Dear Mr. Leasor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412259.

The Plano Independent School District (the "district"), which you represent, received a request for all documents related to an investigation of the requestor's client after a Level I hearing and any witness statements related to that investigation. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. You state, and provide documentation showing, that you have notified third parties whose privacy interests may be implicated by the request.² See Gov't Code § 552.304 (allowing interested party to submit

¹We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²As of the date of this letter, we have not received any correspondence from the notified third parties.

comments indicating why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See* Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

The district claims the informer's privilege for information relating to alleged violations of the educators' code of ethics, section 247.2 of title 19 of the Texas Administrative Code, and district policy. We note that witnesses who provide information in the course of an investigation but do not make the initial report of a violation are not informants for the purposes of the common-law informer's privilege. Further, we note you contend the allegations made involve a violation of the educators' code of ethics. We note that the code is enforced by the Texas State Board for Educator Certification (the "SBEC"). *See* 19 T.A.C. § 247.1. The district does not inform us that any violation of the educators' code of ethics was reported to the SBEC or that the district is authorized to enforce the code of ethics. Likewise, the district does not inform us of any alleged violation of a district policy that would be punishable by a civil or criminal penalty. *See* ORD 582, 515. We, therefore, conclude that the district may not withhold any of the information at issue under section 552.101 on the basis of the common-law informer's privilege.

Section 552.135 of the Government Code provides in part:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

- (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
- (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
- (3) if the informer planned, initiated, or participated in the possible violation.

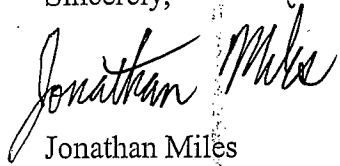
Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A). In this instance, you state that the submitted information reveals the identities of employees of the district who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code and district policy and witnesses to those possible violations. *See* Educ. Code § 21.041(b) (TEA shall propose rules providing for disciplinary proceedings), 19 T.A.C. § 247.2 (Code of Ethics and Standard Practices for Texas Educators). However, you have not identified as reporting parties the individuals whose identities you seek to withhold under section 552.135. Further, we note that section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. Upon review, we find the district has failed to demonstrate how any of the submitted information reveals the identities of individuals who reported another person's possible violation of criminal, civil, or regulatory law and, thus, has not demonstrated the submitted information reveals the identity of an informer for the purposes of section 552.135. Therefore, the district may not withhold any portion of the submitted information under section 552.135 of the Government Code. As you raise no further exceptions, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in dark ink and is positioned above the printed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 412259

Enc. Submitted documents

c: Requestor
(w/o enclosures)

All Third Parties
(w/o enclosures)